IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9602 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI NANJIBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MR PM DAVE for Petitioner

Mr.P.S.Shukla AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 14/12/2000

ORAL JUDGEMENT

Learned AGP Mr. P.S.Shukla tenders the affidavit in reply filed on behalf of respondent no.1-the detaining authority which is taken on record.

#. The petitioner has challenged by way of this petition under Article 226 of the Constitution of India his order of detention passed by the District Magistrate, Bhavnagar on 8.8.2000 in exercise of the powers conferred upon him under section 3(1) of the Gujarat Prevention of Anti social Activities Act (PASA Act for short). The petitioner came to be detained from 9.8.2000 in pursuance of the detention order.

#. The detaining authority considered the investigation in the criminal case registered against the petitioner in all, 5 under the Bombay Prohibition Act. The detaining authority also considered statements of 4 witnesses who stated that on refusing to associate with the petitioner in illegal activities of selling liquor, the witnesses were beaten. Statements of these witnesses were recorded on assurance of anonymity of identity . From the above material the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act.

#. Learned advocate Mr. Gondalia for Mr. P.M.Dave for the petitioner and learned AGP Mr. P.M.Shukla were heard.

#. The detention order came to be challenged on the ground of claim of privilege by the detaining authority under section 9(2) of the PASA Act to keep secret the identity of the witnesses is not genuine. There is no material on record, according to the contention of the petitioner's side that would lead the detaining authority to the subjective satisfaction of fear expressed by the witnesses was genuine.

#. The case of the petitioner is squarely covered by the decision of this court in Jakirbhai Rahimbhai Nagori vs. District Magistrate, Mehsana & ors. reported in 1996(1) GLH 300 After relying upon he decision of the Division Bench in the matter of Koli Ashwin vs. State of Gujarat in Special Cri. Application No.1812 of 1993 this court observed that the privilege claimed by the detaining authority under section 9(2) of PASA Act was not genuine. This court in Jakirbhai Rahimbhai's case (Supra) placed reliance on the following observations made by he Division Bench of this Court in Koli Ashwin's case:

" However, as is well established, for exercising the power under Section 9(2) what is required for a detaining authority is that he must come to a subjective satisfaction himself and for that purpose he must be able to point out either in

> the grounds or in the contemporaneous record that he had sufficient material before him to come to that subjective satisfaction. In the instant case, in the aforesaid background of the statement of each of the witnesses, when we turn to the statements for further material, which the detaining authority can make use for arriving at a subjective satisfaction except for one word "verified" used by the Dy.S.P.. who apparently has put it pursuant to an instruction received from the detaining authority for verifying the statement, there is no other material"

When we turn to the facts of the present case it is clear that the statements of witnesses are recorded by PI, LCB, Bhavnagar . Below the statements, the District Magistrate, the detaining authority has put an endorsement "verified the contents" and from this the detaining authority has reached to the subjective satisfaction that the names of the witnesses are required to be kept secret. It is clear that apprehension or fear as expressed by the witnesses in their statements was before PI, LCB who recorded the statement. The detaining authority has not recorded the statements in this case. Not only that but the Sub-Divisional Police Officer, Bhavnagar has not satisfied himself that the fear or apprehension expresses by the witnesses in the statements recorded by the PI, LCB was correct, according to his belief. The Sub-Divisional Police Officer has recorded the fact that the statements were recorded by PI, LCB and that fact was verified. Therefore, the subjective satisfaction which the detaining authority is required to reach to claim privilege under section 9(2) of PASA Act must that substantiated by material on record. The detaining authority nor the Sub Divisional Police Officer appears to have satisfied themselves that the fear or apprehension of the witnesses were correct to their believe, instead the detaining authority has merely put the above mentioned endorsement to the effect that "verified the contents" and has signed the endorsement and in the circumstances the privilege claimed by the District Magistrate under section 9(2) of the PASA Act is not genuine and to that extent the right of the detenu to make effective representation is jeopardised because the names of the witnesses and address are not provided to the detenu. Therefore, the order of detention is required to be quashed and set aside on this ground alone.

#. In view of the above discussion the order of detention passed by the District Magistrate, Bhavnagar

against the petitioner on 8.8.2000 under the PASA Act is hereby quashed and set aside. The petitioner-Babubhai Nanjibhai is hereby ordered to be released forthwith if he is not required to be detained for any other purposes. Rule is made absolute. Direct service permitted.

(J.R.Vora.J)

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